

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEANTHONY LAMAR SMITH,

Defendant.

2:06-cr-359

2:14-cv-790

MEMORANDUM ORDER

Now pending before the Court is Defendant Leanthony Lamar Smith's MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 71), filed on his behalf by the Federal Public Defender. No response is necessary.

Smith argues that he should be re-sentenced because he no longer qualifies as a career offender under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). Specifically, he argues that his prior conviction for manufacturing, delivering, or possession with intent to manufacture or deliver a controlled substance under Pennsylvania law, 35 Pa.C.S.A. § 780-113(a)(30), is not a "serious drug offense" under the elements-driven categorical approach used in the recent Supreme Court decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013).

Unfortunately for Smith, this precise argument was rejected by the United States Court of Appeals for the Third Circuit in *United States v. Abbott*, 748 F.3d 154 (3d Cir. 2014), where the Court held that § 780-113(a)(30) is a "divisible" statute. Thus the modified-categorical approach may be applied to determine whether a prior conviction under that statute qualifies as an ACCA predicate offense. As the Federal Public Defender recognizes, this Court is required to follow the holding in *Abbott*. Applying the modified-categorical approach, the Court concludes that Smith's three prior convictions for "delivery of cocaine base" are qualifying convictions under the ACCA and, therefore, Smith's motion is without merit.

Accordingly, the MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 71) is **DENIED**. Civil Action No. 14-790 shall be marked closed. Defendant shall have the right to appeal this ruling.

SO ORDERED this 25th day of June, 2014.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

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